



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

DITCH, et al.

Serial No.: 09/238,510

Filing Date: January 27, 1999

For: Tie Down For Wheelchairs

Art Unit: 3612

Examiner: Gordon

3612
#18
to suspend
Group
4/3/03
RECEIVED
MAR 24 2003
GROUP 3600

FIFTH PETITION TO SUSPEND ACTION PURSUANT TO 37 CFR § 1.103

Honorable Director of the Patent
and Trademark Office
Washington, DC 20231

Sir:

Applicants in the above-captioned application hereby respectfully request the

Director to suspend action in this application for a further period of six months for the

04/03/2003 EHARRIS 00000004 501088 09238510
01 FC:1460 following reasons.
130.00 LH

The first Petition to Suspend Action was filed on November 15, 2000, and was granted for a period of six months. A second petition to suspend was filed on May 15, 2001, and was granted on May 30, 2001, for a period of six months. A third petition to suspend was filed November 28, 2001, and was granted on January 8, 2002 for a period of six months. A fourth petition to suspend was filed on June 28, 2002, and was granted on September 19, 2002. No Office Action is outstanding.

The parent patent, USP 5,888,038, was the subject of two actions in the United States District Court for the Western District of Michigan, Southern Division. These actions are *American Seating Company v. Transportation Seating, Inc.*, Case 1:00 CV 322 and *American Seating Company v. Freedman Seating Company and Kinedyne Corporation*, Case 1:00 CV 417. The former action is presently on appeal to the Court of Appeals for the Federal Circuit, and the latter action was terminated by entry of a consent judgment confirming the validity of the patent. This patent has also been asserted in the United States District Court for the Western District of Michigan in *American Seating Company v. USSC Group*, Case 1:01 CV 578.

In the first two actions, defendants alleged prior invention by Richard Craft of Transportation Seating, Inc. and derivation by one or more of the inventors of the instant application. These same allegations are asserted in the third case. While American Seating Company, the assignee of the instant application, denies these allegations, the pending actions are in such postures that these issues have yet to be fully resolved.

Discovery has closed in the *TSI* and *USSC* actions, and further activity relating to resolution of the validity of the parent patent is on hold pending appeal of an unrelated issue or other resolution of outstanding issues including derivation and validity in the *TSI* action.

It is submitted that it would not be appropriate to proceed with the instant application until these issues are resolved because their outcomes will affect patentability of the claims herein. Accordingly, suspension of the prosecution of the instant application is appropriate.

Please charge any fee due and credit any overpayments to Deposit Account No.
50-1088.

Respectfully submitted,

CLARK & BRODY

A handwritten signature in black ink, appearing to read "Conrad Clark", written in a cursive style.

Conrad J. Clark
Reg. No. 30,340

1750 K Street, NW, Suite 600
Washington, DC 20006
Telephone: 202-835-1111
Facsimile: 202-835-1755
Docket No.: 60578-0154
Date: March 18, 2003